

Appln No. 10/573,230
Amdt date October 21, 2009
Reply to Office action of June 23, 2009

REMARKS/ARGUMENTS

In the Office Action of June 23, 2009, the Examiner rejected claims 5-22 under 35 U.S.C. 103(a) as being unpatentable over Dodman (US 5,415,131) in view of Rong et al. (US 6,444,742) and Munoz-Pallares et al. (2001, J. Agric. Food Chem, 49, 4801-4807). Applicants respectfully traverse the rejection and request reconsideration.

The Examiner asserts that, although Dodman does not teach that crystalline minerals are fired as presently claimed, this deficiency is purportedly cured by the combination of Rong and Munoz-Pallares (Office Action, page 4). In making this rejection, the Examiner reasons that, in view of Rong's disclosure of calcining sepiolite and palygorskite clays for 0.5-10 hours at 300 to 850 degrees C, the skilled person would apply these calcining parameters to the absorbant substances of Dodman because Munoz-Pallares discloses altering the Si/Al ratio by calcining. However, the calcining step taught in Munoz-Pallares is provided to alter the Si/Al ratio, and such a ratio could not be calculated for the polyolefin clays of Rong because aluminum is not present in the clays taught by Rong. (At column 3, lines 31-32 and line 45, Rong discloses sepiolite ($Si_{12}Mg_8O_{30}(OH)_4(OH_2)_{48}H_2O$ and palygorskite $Si_8Mg_5O_{20}(OH)_2(OH_2)_{48}H_2O$.) As such, the skilled person would not calcine the clays of Dodman using the specific calcining parameters of Rong in view of Munoz-Pallares, because the skilled person would not combine Rong and Munoz-Pallares.

Moreover, Rong relates to polyolefin/clay nanocomposites and does not relate to using clay as a dispenser. Also, although Rong is silent with respect to why the clay is calcined, the implication of the firing step is that it is useful for polymerizing a polyolefin for producing a uniform nanocomposite. Accordingly, the Rong reference is not relevant to the Dodman reference, and as discussed above, Rong is not relevant to Munoz-Pallares. As such, the skilled person would not combine Rong with Dodman or Munoz-Pallares.

Applicants respectfully remind the Examiner that, in accordance with MPEP 2142 regarding a proper determination under 35 U.S.C 103, "*[k]nowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the 'differences,' conduct the search and evaluate the 'subject matter as a whole' of the invention. The tendency to resort to 'hindsight'" based upon applicant's disclosure is often difficult to avoid*

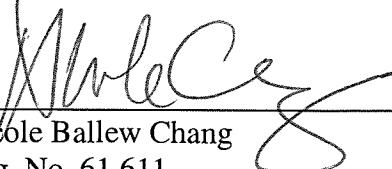
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due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." Applicants submit that the Examiner's rejection of claims 5-22 under 35 U.S.C. 103(a) as being unpatentable over Dodman in view of Rong and Munoz-Pallares is improper.

Furthermore, the Federal Circuit has stated that "*rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.*" *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d, 1336 (Fed. Cir. 2006). As such, Applicants submit that it is not reasonable to presume the skilled person would ignore that Rong clearly teaches sepiolite and palygorskite without aluminum, and apply the teachings of Munoz-Pallares with respect to calcining for altering the Si/Al ratio. Applicants further submit that the skilled person would not have a rational reason to apply the firing step of a polyolefin clay for making a uniform nanocomposite as in Rong to the clay for animal litter of Dodman. Applicants request that the Examiner withdraw the rejection and allow the claims--or at least identify the rational underpinning with respect to combining Rong and Munoz-Pallares, as well as Rong and Dodman.

For the foregoing reasons, Applicants respectfully submit that all claims pending in the application are patentable over the art. A notice of allowance is respectfully requested. However, if there are any remaining issues that can be addressed by telephone, Applicants invite the Examiner to contact Applicants' counsel at the number indicated below.

Respectfully submitted,
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